



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0082]

RIN 1625-AA00

Safety Zone; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations for annual, combined marine events that require the establishment of a temporary safety zone within the Captain of the Port Zone Buffalo on the Cuyahoga River, Cleveland, OH. This proposed safety zone regulation is necessary to protect the surrounding public, spectators, participants, and vessels from the hazards associated with the rowing regatta in the narrow waterway of the Cuyahoga River. This proposed rule is intended to restrict vessels annually from a portion of the Cuyahoga River for up to 10 hours during the combined Dragon Boat Festival and the Head of the Cuyahoga Regatta.

DATES: Comments and related materials must be received by the Coast Guard on or before [30 DAYS FROM PUBLICATION IN THE

FEDERAL REGISTER]. Requests for public meetings must be received [INSERT DATE 20 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2014-0082 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Delivery: at the same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716-843-9573, e-mail SectorBuffaloMarineSafety@uscg.mil or LT Hillary Allegretti, Marine Safety Unit Cleveland at

Hillary.a.allegretti@uscg.mil . If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826 or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2014-0082), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov> or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when

the comment is successfully transmitted. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0082] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this notice of proposed rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-

0082) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. If you want us to hold a public meeting, submit your request by [INSERT DATE 20 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Any subsequent meetings held where public comment is sought to aid this rulemaking would be held at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Head of the Cuyahoga (HOTC) rowing regatta has occurred annually for over a decade and the Dragon Boat Festival for the last 8 years. In response to past years' events, the Coast Guard has established a temporary safety zone to protect the boating public. For example, in 2013, the Captain of the Port Buffalo initiated a rulemaking (78 FR 42736, July 17, 2013) to ensure the safety of spectators and vessels during the rowing event. The safety zone proposed in this notice of proposed rulemaking is identical in size, location, and effect as that established by the 2013 rulemaking.

C. Basis and Purpose

As mentioned in the "Regulatory History and Information" section, the HOTC is an annual rowing regatta that has taken place for over a decade. The HOTC takes place on the Cuyahoga River along a 4800 meter course and attracts numerous rowing clubs and programs from across the U.S. Typically, the event occurs on the third Saturday of September between the hours of 7 a.m. and 4 p.m. In 2014, the HOTC will occur between 6 a.m. and 4 p.m. on September 20.

In conjunction with the HOTC, the Seventh Annual Cleveland Dragon Boat Festival will take place from Superior/Nautica Bend to just north of the Detroit Superior Viaduct Bridge. The Dragon Boat festival will feature three head-to-head races being

held over the course of the day.

The Captain of the Port Buffalo has determined that the HOTC and the Cleveland Dragon Boat Festival rowing events present significant hazards to public spectators and participants.

D. Discussion of Proposed Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo proposes to establish a safety zone that will ensure the safety of spectators and vessels during the HOTC and the Cleveland Dragon Boat Festival. The proposed safety zone would be enforced on the third Saturday of September of each year from 6 a.m. until 4 p.m. As noted above, in 2014, that date will be September 20.

The proposed safety zone would encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41° 29'55" N, 081°42'23" W (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular at position 41° 28'32" N, 081°40'16" W (NAD 83) just south of the Interstate 490 bridge at MM4.79 of the Cuyahoga River.

Entry into, transiting, or anchoring within the proposed safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF

Channel 16.

Additionally, all vessels over 65 feet intending to transit, moor or conduct operations to include loading or discharging of cargo or passengers in the Cuyahoga River while the safety zone is being enforced should request permission from the COTP or his/her designated representative at least 12 hours before they wish to transit the zone.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have

minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this proposed rule will be relatively small and enforced for relatively short time. Also, the proposed safety zone is designed to minimize its impact on navigable waters.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners of operators of vessels intending to transit or anchor in a portion of the Cuyahoga River near Cleveland, Ohio between 6 a.m. to 4 p.m. on the third Saturday of September each year.

This proposed safety zone will not have a significant

economic impact on a substantial number of small entities for the following reasons: the safety zone will be enforced for only 10 hours annually. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. The COTP or his/her designated representative would attempt to issue annual maritime advisories widely available to users of the river to provide additional advance notice of the safety zone and the date it would be enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), the Coast Guard want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against

small entities that comment on this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their

discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically

excluded, under figure 2-1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in the docket where indicated under ADDRESSES.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.940 to read as follows:

§ 165.940 Safety Zone; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH.

(a) Location. The following area is a safety zone: all waters of the Cuyahoga River, Cleveland, OH between a line drawn perpendicular to the river banks from position 41° 29'55" N, 081°42'23" W (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular to the river banks at position 41° 28'32" N, 081°40'16" W (NAD 83) just south of the Interstate 490 bridge at MM 4.79 of the Cuyahoga River.

(b) Enforcement period. The third Saturday of September each year.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone identified in paragraph (a) of

this section is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) The safety zone identified in paragraph (a) of this section is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

(4) Additionally, all vessels over 65 feet intending to transit, moor or conduct operations to include loading or discharging of cargo or passengers in the Cuyahoga River while the safety zone is being enforced should request permission from the COTP or his/her designated representative at least 12 hours before the zone is established.

(e) Exemption. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this

section.

(f) Waiver. For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

Dated: March 19, 2014.

B. W. ROCHE,
Captain, U. S. Coast Guard,
Captain of the Port Buffalo.

[FR Doc. 2014-09383 Filed 04/24/2014 at 8:45 am; Publication
Date: 04/25/2014]